

Notice of Allowability

Application No.

09/865,999

Examiner

William D. Thomson

Applicant(s)

ALVAREZ ET AL.

Art Unit

2123

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 18 January 2005.
2. ☒ The allowed claim(s) is/are 1-3,5-11,13-17 and 22-32.
3. ☒ The drawings filed on 25 May 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 1/18/05
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

W.D. Thomson
Primary Examiner
Art Unit 2123
TC 2100

DETAILED ACTION AND ALLOWANCE

1. Claims 1-3, 5-11, 13-17 have provided with amendments and new claims 22-32 have been presented. Claims 1-3, 5-11, 13-17, 22-32 been examined and allowed over the prior art of record.

REASONS FOR ALLOWANCE

- 2 The following is an examiner's statement of reasons for allowance:
- 3 Applicant has amended and persuasively argued to overcome the rejections under U.S.C. 35 § 101. The rejections are withdrawn.
- 4 Applicant has made further amendments to the specification and Abstract, including providing a new abstract on a separate sheet that overcome the objections to the specification and abstract. The objections are withdrawn.
- 5 Applicant has provided a 1449 which complies with the standards of the Office and therefore the objection(s) has been withdrawn.
- 6 The prior art does not expressly teach or render obvious the invention as recited in independent claims 1, 14 and 22.

Though it is known to use failure analysis to determine target device performance and relative mean to failure and ratios for predictive and stochastic analysis of computer peripheral performability, the specific methodology and system, as recited in the context of the independent claims as a whole and directed to the failure scenario generator modules and performability evaluator module and multi-part performability function for target system(s) and modeling performance and further argued on page 14, lines 18-27,

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pages 16, last paragraph et seq. and supported in within citations of the specification was not expressly uncovered in the prior art teachings. Moreover, as the courts have held: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsisimilis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Nor were references uncovered that would have provided a basis of evidence for asserting a motivation that one of ordinary skill level in the art at the time the invention was made, knowing of failure analysis and performance analysis methodologies that would render the independent claims obvious over their teachings.

Dependent claims are allowed as they depend upon allowable independent claims.

7. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

CONTACT INFORMATION

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William D. Thomson whose telephone number is 571-272-3718. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Teska can be reached on 571-272-3716.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William Thomson
Primary Examiner
Technology Center 2100
A.U. 2123
April 1, 2005